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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.

NO. CR. S-99-0433 WBS

MEMORANDUM AND ORDER RE
DEFENDANT HOANG AI LE'S MOTION
TO SUPPRESS EVIDENCE FROM
WIRETAPS

14
15 HOANG AI LE, et. al.
16 Defendants.

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18 Defendant Hoang Ai Le is one of seven defendants named
19 in this indictment.¹ The wiretap investigation in this case
20 began on August 5, 1995 and continued until April 8, 1996.
21 During that period, wiretaps were authorized pursuant to Title
22 III of the Omnibus Crime Control and Safe Streets Act of 1968 as
23 amended by the Electronic Communications Privacy Act of 1968, 18
24 U.S.C. § 2510, et seq, by judges in the Northern District of
25

26 ¹ Defendants John That Luong, Thy Chann, and Minh Huynh
27 have joined this motion to suppress. Chann and Huynh appear to
28 have adopted Le's motion in full and do not bring particularized
arguments of their own. Luong reiterates Le's arguments and
offers additional evidence.

1 California, the Central District of California, and the Eastern
2 District of New York, and by the undersigned judge in the Eastern
3 District of California.² Defendant requests a Franks hearing on
4 his claims that the wiretap affidavits contained false and
5 misleading statements. Defendant also moves to suppress evidence
6 from intercepted wiretap communications on the grounds that: (1)
7 the investigative goals of the wiretaps authorized in this case
8 were so broad as to render 18 U.S.C. § 2518 a nullity; (2) the
9 wiretaps were being used for their evidentiary advantages; and
10 (3) requisite necessity for the wiretap extensions was lacking.

11 I. Applicable Law

12 "Title III of the Omnibus Crime Control and Safe
13 Streets Act of 1968, 18 U.S.C. §§ 2510-2520, permits law
14 enforcement officials to engage in electronic surveillance if
15 certain privacy safeguards are observed." United States v.
16 McGuire, 307 F.3d 1192, 1196 (9th Cir. 2002). A wiretap
17 applicant must provide, among other things, "a full and complete
18 statement as to whether or not other investigative procedures
19 have been tried and failed or why they reasonably appear to be
20 unlikely to succeed if tried or to be too dangerous." 18 U.S.C.
21 § 2518(1)(c). Before authorizing a wiretap, a judge must make
22 several statutorily-required findings of probable cause,
23 including a determination that "normal investigative procedures
24 have been tried and failed or reasonably appear unlikely to

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26 ² Defendants have not provided the court with the wiretap
27 applications and accompanying affidavits from the Central
28 District of California or the Eastern District of New York. The
court will therefore assume that defendants are not moving to
suppress any evidence resulting from those wiretap
authorizations.

1 succeed if tried or to be too dangerous." 18 U.S.C.

2 § 2518(3)(b).

3 The purpose of these "necessity requirements" is "to
4 ensure that wiretapping is not resorted to in situations where
5 traditional investigative techniques would suffice to expose the
6 crime." United States v. Blackmon, 273 F.3d 1204, 1207 (9th Cir.
7 2001). While wiretaps should not be the initial step in an
8 investigation, law enforcement officers need not exhaust every
9 possible investigative alternative before obtaining a wiretap.
10 McGuire, 307 F.3d at 1196-97. The Ninth Circuit "has adopted a
11 'common sense approach' in which the reviewing court uses a
12 standard of reasonableness to evaluate the government's good
13 faith effort to use alternative investigative means or its
14 failure to do so because of danger or low probability of
15 success." Blackmon, 273 F.3d at 1207.

16 A "judge authorizing a wiretap has considerable
17 discretion." United States v. Brone, 792 F.2d 1504, 1506 (9th
18 Cir. 1986). Accordingly, a court reviewing a wiretap
19 authorization must use an abuse of discretion standard. Id. A
20 court should uphold a wiretap, if "[l]ooking only to the four
21 corners of the wiretap application . . . there is a substantial
22 basis for these [statutorily-required] findings of probable
23 cause." United States v. Meling, 47 F.3d 1546, 1552 (9th Cir.
24 1995).

25 II. Franks Hearing

26 Under Franks v. Delaware, 438 U.S. 154 (1978), a
27 defendant is entitled to an evidentiary hearing regarding the
28 veracity of an affidavit supporting an application "if he can

1 make a substantial preliminary showing that the affidavit
2 contain[ed] intentionally or recklessly false statements, and
3 . . . [that] the affidavit purged of its falsities would not be
4 sufficient to support a finding of probable cause." Id. at 1553
5 (internal quotation and citation omitted). The Title III
6 necessity requirement is "material to the issuance of a wiretap
7 order and [is] subject to Franks." United States v. Ippolito,
8 774 F.2d 1482, 1485 (9th Cir. 1985).

9 A defendant must satisfy five requirements in order to
10 be entitled to a Franks hearing: "(1) the defendant must allege
11 specifically which portions of the warrant affidavit are claimed
12 to be false; (2) the defendant must contend that the false
13 statements or omissions were deliberately or recklessly made; (3)
14 a detailed offer of proof, including affidavits, must accompany
15 the allegations; (4) the veracity of only the affiant must be
16 challenged; [and] (5) the challenged statements must be necessary
17 to find probable cause.'" United States v. Perdomo, 800 F.2d 916,
18 920 (9th Cir. 1986) (quoting United States v. Dicesare, 765 F.2d
19 890, 895 (9th Cir. 1985)). Here, defendant contends that two
20 aspects of the wiretap affidavits contain false or misleading
21 statements, warranting a Franks hearing.

22 A. Claims that Electronic Surveillance Fell Short of
23 Achieving Investigative Goals

24 First, defendant contends that the government's claims
25 in 1996 that electronic surveillance had fallen short of
26 achieving its investigative goals "were patently false or
27 misleading at best" because by 1996, even though new members were
28 being brought into the organization, the government already knew

1 who the bosses were and how they operated. Defendant has not
2 made a substantial preliminary showing that the government's
3 statements were false or misleading.

4 Although the government may have known the identities
5 of the bosses of the conspiracy and how they operated by 1996, it
6 does not necessarily follow that the government's statements that
7 electronic surveillance was falling fall short of its
8 investigative goals were false. The stated investigative goals
9 of the 1996 wiretaps went beyond the mere identification of the
10 leaders of the conspiracy and included, among other things, "the
11 identification of other co-conspirators, aiders and abettors who
12 are acting in concert with the subjects of" the applications.
13 See, e.g., N.D. Cal. Jan. 19, 1996 Appl. at 14943:15-17; N.D.
14 Cal. Jan. 30, 1996 Appl. at 15150:4-6; E.D. Cal. Feb. 20, 1996
15 Appl. at 15264:21-24. Therefore, the government's knowledge of
16 who the bosses of the conspiracy were at the time of the 1996
17 applications does not preclude a finding that probable cause
18 existed to allow the government to engage in electronic
19 surveillance to pursue the government's other investigative
20 goals, particularly the identification of other conspirators.
21 Cf. United States v. Sandoval, 550 F.2d 427, 430 (9th Cir. 1977)
22 (upholding wiretap where government sought to apprehend satellite
23 conspirators even though it had already obtained evidence to
24 prosecute main conspirators). In the absence of any more
25 specific allegations by defendant regarding the alleged falsity
26 of the government's claims that electronic surveillance was
27 falling short of its investigative goals, the court cannot grant
28 a Franks hearing on this claim.

1 B. Claims that Normal Investigative Procedures Would Not
2 Work

3 Second, defendant apparently contends that the
4 government's claims that normal investigative procedures would
5 not work were false. In a footnote, defendant states that,
6 "[c]uriously, the government continually claimed that 'normal'
7 investigative procedures would not work in their investigation of
8 the narcotics trafficking or computer company robberies despite
9 the fact that the March 5, 1995 heroin distribution involved a
10 sale to an undercover police officer set up by a confidential
11 informant." Defendant also states that the government did not
12 try investigative procedures other than the wiretaps after the
13 fall of 1995. These allegations fall short of establishing
14 defendant's entitlement to a Franks hearing.

15 First, defendant does not specifically allege which
16 portions of the wiretap affidavits he believes are false or
17 misleading. Second, the success of one undercover drug
18 transaction is irrelevant to whether normal investigative
19 procedures were likely or unlikely to succeed in the computer
20 company robbery aspect of the investigation.

21 Third, the fact that one undercover officer engaged in
22 a single heroin transaction does not lead to the conclusion that
23 the government lied or misled the courts in its assertions that
24 normal investigative techniques were not working, were unlikely
25 to succeed, or were too dangerous. The government consistently
26 provided the courts authorizing the wiretaps with information
27 regarding the potential use of undercover officers and details
28 regarding transactions set up by confidential informants. See,

1 e.g., N.D. Cal. Aug. 1, 1995 Appl. at 14308:15-14312:16
2 (summarizing a heroin transaction set up by Confidential Source
3 ["C-S"] 1 and involving an undercover agent); id. at 14336:26-
4 14337:7 (stating that CS-7's attempt to introduce an undercover
5 agent was unsuccessful and that on one occasion, an undercover
6 agent was present at a heroin transaction but was unable to meet
7 with the principal subjects); N.D. Cal. Dec. 8, 1995 Appl. at
8 14823:20-14824:7 (discussing the difficulty in introducing an
9 undercover agent into the investigation due to the fact that
10 confidential sources had been unable to gain introductions to
11 high-level members of the drug organization).

12 Fourth, defendant Luong, in an apparent effort to bring
13 more specificity to defendant Le's argument that a Franks hearing
14 is required on this issue, contends that "the government
15 substantially misrepresented the need for continuation of
16 wiretaps after the first two or three months of wiretap orders
17 . . . and the government substantially downplayed and omitted
18 from those later wiretap applications the significance of the
19 information they had already learned through the initial wiretaps
20 as well as through other traditional means of investigation such
21 as interviewing suspects who had been arrested and cooperated
22 with authorities. . . ." ³

23 However, the closest defendant Luong comes to
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25 ³ Defendant Luong does not characterize his joinder as a
26 supplemental motion. Defendant Luong's argument regarding
27 information the government received from Reth appears to be
28 related to defendant Le's more general argument regarding normal
investigative procedures. Therefore, the court will consider
defendant Luong's argument on this point as to defendants Luong,
Le, Chann, and Huynh.

1 supporting this contention by pinpointing a specific portion of a
2 wiretap affidavit that was allegedly false or misleading is the
3 discussion in his statement of facts of information that the
4 government received from Charlie Reth, a member of the Luong
5 organization who was arrested in September 1995 and provided the
6 government with some information regarding the structure of the
7 robbery organization, and of intercepted calls that corroborated
8 this information and provided further insight into the structure
9 of the robbery organization.

10 Defendant Luong apparently argues that the government's
11 statements regarding the above facts are misleading because the
12 government downplayed the significance of the information Reth
13 was able to provide. However, the government affiant
14 acknowledged to the authorizing court that Reth indicated to the
15 government that he might "be willing to provide some level of
16 cooperation regarding his involvement in armed robberies of
17 computer chip companies." (N.D. Cal. Sept. 5, 1995 Appl. at
18 14489:15-19). The affiant further stated that Reth could not
19 provide information regarding the drug trafficking activities,
20 which were also being investigated, or the "entire organization
21 in which Luong operates." (Id. at 14489:19-25). Finally, the
22 affiant noted that because Reth had been arrested, it was
23 unlikely that he would receive information about future robberies
24 being planned by Luong and his associates. (Id. at 14489:25-
25 14490:1).

26 Defendant Luong does not assert, and there is nothing
27 in the record before this court to indicate, that Reth provided
28 the government with any significant information regarding drug

1 trafficking or the structure of the entire organization.⁴
2 Therefore, defendant Luong has not made a substantial showing the
3 government's statements regarding the limitations of information
4 obtained from Reth were misleading.

5 Because defendant has failed to make a substantial
6 preliminary showing that any of the statements by the government
7 regarding normal investigative procedures were false or
8 misleading, a Franks hearing on this issue is unnecessary.

9 II. Motion to Suppress Evidence From Wiretaps

10 Motions to suppress evidence from wiretaps are treated
11 the same way as motions to suppress other kinds of evidence.
12 United States v. Losing, 539 F.2d 1174, 1177 (8th Cir. 1976).
13 "An evidentiary hearing on a motion to suppress ordinarily is
14 required if 'the moving papers are sufficiently definite,
15 specific, detailed, and nonconjectural to enable the court to
16 conclude that contested issues of fact going to the validity of
17 the search are in question.'" United States v. Licavoli, 604 F.2d
18 613, 621 (9th Cir. 1979). "[E]videntiary hearings should not be
19 set as a matter of course, but only when the petition alleges
20 facts which if proved would require the grant of relief." Cohen
21 v. United States, 378 F.2d 751, 760 (9th Cir. 1967) (internal
22 quotation omitted). Therefore, a hearing is unnecessary when
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24 ⁴ The synopsis of the government's interview with Reth
25 shows that Reth mainly gave the government information regarding
26 the structure of the robbery organization, details of some
27 robberies that took place in 1994 and 1995, and the names of some
28 people involved in the "robbery crews." (Def. Luong's Mot. Ex. A
at 97,222-97,224). The only information related to drug
trafficking activities is a statement that "'Johnny' and 'Jimmy'
work together under 'John'-may have people dealing coke." (Id.
at 97,224).

1 suppression is improper as a matter of law. See Losing, 539 F.2d
2 at 1178.

3 A. Goals of Wiretap

4 First, defendant contends that the goals of the
5 wiretaps were "so broad that [they] could never be met,"
6 therefore rendering 18 U.S.C. § 2518 "a nullity." According to
7 defendant, "[t]he electronic surveillance authorized through 1995
8 had met its realistic investigative goals," and after January 1,
9 1996, the government was "manufacturing requisite necessity" by
10 stating that investigative goals had not been met.

11 In the 1996 wiretap applications, the government stated
12 that, among other things, it expected that the intercepted wire
13 communications would concern "the identification of other co-
14 conspirators, and aiders and abettors who are acting in concert
15 with the subjects of this application, including the identity of
16 currently unidentified sources of heroin, and individuals
17 involved in the planning and commission of interstate computer
18 robberies." See, e.g., N.D. Cal. Jan. 19, 1996 Appl. at
19 14943:15-19; E.D. Cal. Jan. 19, 1996 Appl. at 15057:20-25; N.D.
20 Cal. Jan. 30, 1996 Appl. at 15166:12-16; N.D. Cal. Feb. 16, 1996
21 Appl. at 15364:9-13. While defendant is correct that many of the
22 members of the Luong organization had been identified by the end
23 of 1995, it does not follow that the government's goal of
24 identifying remaining members of the conspiracy was overbroad or
25 amounts to "manufacturing" necessity.

26 An order authorizing electronic surveillance "'must be
27 broad enough to allow interception of any statements concerning a
28 specified pattern of crime.'" Licavoli, 604 F.2d at 620 (quoting

1 United States v. Tortorello, 480 F.2d 764, 780 (2d Cir. 1973)).
2 Moreover, as the Ninth Circuit has recognized, "[b]ecause the
3 government has a duty to extirpate conspiracy beyond its duty to
4 prevent the mere commission of specific substantive offenses
5 . . . the government is entitled to more leeway in its
6 investigative methods when it pursues a conspiracy." McGuire,
7 307 F.3d at 1198.

8 The mere fact that some of the main conspirators have
9 been identified does not bar the government from using electronic
10 surveillance to identify remaining members of the conspiracy.
11 Cf. United States v. Torres, 908 F.2d 1417, 1422 (9th Cir. 1990)
12 ("We have consistently upheld findings of necessity where
13 traditional investigative techniques lead only to apprehension
14 and prosecution of the main conspirators, but not to apprehension
15 and prosecution of suppliers, major buyers or other satellite
16 conspirators."); Sandoval, 550 F.2d at 430 (stating that
17 "[r]equiring the officers to halt their investigation when they
18 obtained evidence to prosecute only [the main conspirator and his
19 wife] would have frustrated" the objective of apprehending
20 satellite conspirators).

21 In light of the government's duty to eradicate
22 conspiracies, the government's goal of further identifying
23 members of the Luong organization through the use of wiretaps in
24 1996, while broad, was not impermissible.⁵ See McGuire, 307 F.3d

26 ⁵ Defendant also contends that in no case cited by the
27 government has a wiretap that continued as long as the one in
28 this case been authorized. While this may be the case, the
procedures set out in 18 U.S.C. § 2518 for the interception of
wire communications guard against the possibility of indefinite

1 at 1198 (stating that the conclusion that the government has more
2 leeway in investigating conspiracies "reflects a larger principle
3 of proportionality embodied in the wiretapping statute: The more
4 grave the threat posed to our society, the greater the
5 government's leeway in pursuing it."); see also Sandoval, 550
6 F.2d at 431 (noting that "the affidavit, while broad in the sense
7 of the numbers suspected, is narrowly limited to the [the main
8 conspirator] and his underlings and to the one alleged
9 conspiracy").

10 In a related argument, defendant contends that the
11 government's broad goals resulted in a wiretap of impermissible
12 length in this case. Defendant states that the government fails
13 to cite a case in which a wiretap that continued for as long as
14 the one in this case was authorized. The absence of such a case
15 is insignificant. Congress has chosen to guard against the
16 possibility of indefinite wiretaps not by setting a specific
17 limit on the duration of electronic surveillance, but by
18 requiring a statement of the period of time for interception, by
19 stating that a wiretap may not be authorized "for any period
20 longer than is necessary to achieve the objective of the
21 authorization, nor in any event longer than thirty days," and by
22 requiring applications for wiretap extensions to meet the same
23 requirements as initial applications. 18 U.S.C. § 2518. Each of
24 these procedures has been followed here.

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26 wiretaps by requiring a statement of the period of time of
27 interception, by stating that a wiretap may not be authorized for
28 "for any period longer than is necessary to achieve the objective
of the authorization, nor in any event longer than thirty days,"
and by requiring applications for wiretap extensions to meet the
same requirements as initial applications.

1 Moreover, the Ninth Circuit case law cited by defendant
2 does not address the issue of length. As defendant points out,
3 McGuire "says nothing about authorizing electronic surveillance
4 for almost nine months." The court cannot interpret this silence
5 as disapproval. Suppression on the grounds that the government's
6 goals were too broad or that the length of the electronic
7 surveillance in this case was impermissible is therefore
8 improper.

9 B. Use of Wiretaps to Gather Admissible Evidence

10 Defendant next contends that the necessity requirement
11 was not met because the government rejected traditional methods
12 of investigation "because they did not yield the evidentiary
13 benefits of electronic surveillance, and not because these
14 methods used in conjunction with each other would not have been
15 successful." In the wiretap applications, the government stated
16 that the intercepted communications were expected to constitute
17 admissible evidence of the commission of the offenses enumerated
18 in the wiretap applications. See, e.g., N.D. Cal. Jan. 30, 1996
19 Appl. at 15167:20-24 (stating that the communications were also
20 expected to provide "proof beyond a reasonable doubt of the
21 intent of each participant to join the conspiracy and to
22 participate willingly"); E.D. Cal. Feb. 20, 1996 Appl. at
23 15266:6-9 (stating that the communications were expected to
24 provide admissible evidence of the commission of the offenses and
25 proof of intent).

26 Wiretaps "can be necessary if [they] give the
27 government the ability to 'develop an effective case.'" See
28 McGuire, 307 F.3d at 1198 (quoting Brone, 761 F.2d at 1506). The

1 McGuire court went on to clarify the Ninth Circuit's holding in
2 Brone and stated that "[b]y an effective case, we meant evidence
3 of guilt beyond a reasonable doubt." Id. Therefore, the
4 government's expectation that the intercepted communications
5 would provide admissible evidence of defendant's guilt was not
6 impermissible.

7 Moreover, defendant's assertion that "[o]ne of the
8 primary reasons" that the government chose wiretaps over other
9 investigative methods was because of the evidentiary benefits of
10 electronic surveillance is unsupported by the evidence before the
11 court. In the affidavits accompanying the wiretap applications,
12 the government clearly detailed the limitations on traditional
13 investigative techniques. For example, the government indicated
14 that some of its confidential sources were unwilling to testify,
15 were unavailable for further interviews, did not know the full
16 extent of the organization's operations, and/or were unable to
17 help the government identify Luong's heroin supplier. See, e.g.,
18 N.D. Cal. Aug. 1, 1995 Appl. at 14292:18-20, 14294:15-19,
19 14295:12-16, 14295:17-21; 14295:26-14296:1; N.D. Cal. March 1,
20 1996 Appl. at 15676:14-20. The government also explained various
21 problems with physical surveillance, sting operations, and other
22 investigative techniques. See, e.g., N.D. Cal. Sept. 5, 1995
23 Appl. at 14491:4-18 (stating that covert physical surveillance of
24 Luong's residence difficult was because of its location in a
25 sparsely populated new development); E.D. Cal. Jan. 19, 1996
26 Appl. at 15136:4-19 (stating that Luong was aware of surveillance
27 and that his mother told him not to return home because police
28 were around); N.D. Cal. March 1, 1996 Appl. at 15679:10-17

1 (stating that a sting operation would be counter-productive due
2 to the press coverage of this technique following the arrest of
3 one of Luong's associates).

4 Because of the limitations of traditional investigative
5 techniques, the wiretaps were necessary to enable the government
6 to build an effective case against members of the Luong
7 organization. Cf. Brone, 792 F.2d at 1506 (upholding wiretap
8 authorization that concluded that no other investigative
9 techniques would allow the government to build an effective case
10 where physical surveillance had not been successful, federal
11 agents had been unable to identify the source of narcotics and
12 details of operation, and pen registers and telephone toll
13 records did not reveal the nature of the business being
14 transacted by telephone). The fact that gaining admissible
15 evidence was among the expected outcomes of the wiretap
16 investigation does not render the wiretaps unnecessary when there
17 were clear limitations on other investigative techniques.
18 Accordingly, suppression on this ground is improper.

19 C. Necessity for the Wiretap Extensions

20 Finally, defendant contends that the wiretap extensions
21 were "not supported by requisite necessity." An application for
22 an extension of a wiretap order must include "a statement setting
23 forth the results thus far obtained from the interception, or a
24 reasonable explanation of the failure to obtain such results."
25 18 U.S.C. § 2518(1)(f). In addition, the "issuing court is
26 required to make the same findings for an extension order as it
27 is for an original order." Brone, 792 F.2d at 1506 (citing
28 United States v. Giordano, 416 U.S. 505, 530 (1974)); 18 U.S.C.

1 § 2518(5)).

2 In arguing that the necessity requirement was not met
3 in the applications for wiretap extensions, defendant reiterates
4 his arguments that the government knew that its investigative
5 goals could never be met and that the government was using
6 electronic surveillance "to suit its evidentiary needs." As
7 discussed, both the goal of further identifying members of the
8 conspiracy and the use of electronic surveillance to build an
9 effective case were permissible.

10 In addition, the government's applications for the
11 extension of wiretap orders adequately set forth the results of
12 previous interceptions and included detailed statements as to why
13 normal investigative procedures were unlikely to succeed in this
14 case.⁶ See, e.g., E.D. Cal. March 26, 1996 Appl. for an Order
15 Extending Authorization to Intercept Wire Communications at
16 15956:1-15972:3 (summarizing previously intercepted phone calls
17 to and from the phone number for which the extension was sought);
18 id. at 15978:18-15986:25 (explaining why other investigative
19 techniques such as the use of informants, search warrants, and
20 the grand jury, among others, had been unsuccessful, were
21 unlikely to succeed, or were too dangerous). The government need
22 not exhaust every possible investigative alternative before
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24 ⁶ Defendants rely on Blackmon, 273 F.3d at 1210-1211, for
25 the proposition that boilerplate language regarding why
26 traditional investigative methods have failed, will fail, or are
27 too dangerous is impermissible. As discussed throughout this
28 Order, the government provided detailed information regarding the
feasibility of, and results obtained from, traditional
investigative methods. Therefore, the affidavits before this
court do not suffer from the same deficiencies as those before
the Ninth Circuit in Blackmon.

1 requesting a wiretap. McGuire, 307 F.3d at 1196-97. Because the
2 extensions satisfied the requirements of 18 U.S.C. §§ 2518(1)(f)
3 and 2518(5), suppression of evidence obtained from the wiretap
4 extensions is inappropriate.

5 Accordingly, because suppression is improper on any of
6 the grounds advanced by defendant, an evidentiary hearing on
7 these issues is unnecessary. See Losing, 539 F.2d at 1178;
8 Cohen, 378 F.2d at 751.

9 IT IS THEREFORE ORDERED that defendant Le's motion for
10 suppression of evidence from wiretaps be, and the same hereby is,
11 DENIED.⁷

12 DATED: February 13, 2003

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WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE
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28 Accordingly, this motion is also denied as to
defendants Luong, Chann, and Huynh.